

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

TALISMAN CASUALTY INSURANCE
COMPANY AND ABE'S BOAT RENTALS,
INC.

VERSUS

BRO-TEX INTERNATIONAL METALS,
LLC, HENRY & SONS CONSTRUCTION
COMPANY, INC., JEFF HENRY, JRPS, LLC,
ARCHIMEDES RECYCLING VENTURE,
LLC, AND VERSATILE MARINE
SERVICES, INC.

CIVIL ACTION NO. 1:20-CV-00169

JUDGE TRUNCALE

JOINT REPORT OF RULE 26(f) ATTORNEY CONFERENCE

1. A brief factual and legal synopsis of the case.

A. By Plaintiffs

This is a claim for property damages arising from an incident that occurred on April 3, 2018, when the M/V DUTCHMAN—a vessel owned by Abe's Boat Rentals, Inc—was damaged by a Mantiwoc 4100 Crane that fell onto the vessel. The vessel was at Gabby Dock in Sabine Pass having anchor chain unloaded from the vessel. The crane unloading the chain fell across the stern of the vessel, causing damages totaling \$253,867.16.

The Plaintiffs understand the crane was owned by Henry & Sons Construction Company, Inc., JPRS, LLC, and/or Jeff Henry, and was operated by an employee of Henry & Sons Construction Company, Inc. The Plaintiffs also understand that the crane operator was under the supervision, direction, and/or control of Bro-Tex International Metals, Inc., Henry & Sons Construction Company, Inc., Jeff Henry, JPRS, LLC, Archimedes Recycling Venture, LLC, and/or Versatile Martine Services, Inc. at the time.

B. By Defendants

In short, neither Versatile Marine nor Archimedes Recycling had anything to do with this incident, which is borne out by the documents recently disclosed by Plaintiffs. VMSI and ARV did not: charter the Plaintiff's vessel, did not own the cargo, did not own the crane, did not employ the crane operator, and had no one present at the location. VMSI and ARV dispute the legal ability of Abe's to assert a claim, as it filed for bankruptcy within days after this incident and is resisting any obligation to defend the previously-filed state court suit brought by the crane operator on that ground. As all the parties to this case except Talisman Casualty are also in that state court suit, this Court should stay this action. Defendants assert that Plaintiffs' claim is also barred due to laches and limitations and the negligence of Abe's Boat Rentals in connection with the unloading operation.

Jeff Henry, Henry and Sons Construction, Inc. and any affiliated company had nothing to do with this incident based on disclosed documents as well as based on the borrowed servant doctrine.

2. The jurisdictional basis for this suit.

Jurisdiction is proper in the United States District Court for the Eastern District of Texas because the incident occurred in Texas. Jurisdiction is proper under general maritime law because this action involves a maritime tort that occurred on navigable waters. Venue is appropriate under 28 U.S.C. § 1392 because all or a substantial part of the events or omissions giving rise to this claim arose within this District.

3. Confirm that initial mandatory disclosures required by Rule 26(a)(1) and this Order have been completed.

Talisman Casualty Insurance Company, Abe's Boat Rentals, Inc., Archimedes Recycling Ventures, LLC, and Versatile Marine Services, Inc. have completed the initial mandatory

disclosures required by Rule 26(a)(1) and the Court's Order.

4. Proposed Scheduling Order deadlines.

The parties agree there is no need to deviate from the standard schedule. *See* Proposed Scheduling Order attached.

5. If the parties agree that mediation is appropriate, and the parties can agree upon a mediator, the name, address, and phone number of that mediator, and a proposed deadline should be stated. An early date is encouraged to reduce expenses. The court may appoint a mediator upon request.

The parties agree that mediation is appropriate, and would suggest that mediation be set by April 30, 2021. Also, the parties are confident that they will be able to agree to a specific mediator but are agreeable to having one appointed by the Court as well.

6. Any changes to the limitations on discovery imposed by the rules, including number of depositions and interrogatories.

None at this time.

7. The identity of persons expected to be deposed.

Jeff Henry
*Representative of Henry & Sons Construction Company, Inc.
JPRS, LLC, and/or Flatboat 1, LLC*

Les Kemeny
*Representative of Henry & Sons Construction Company, Inc.,
JPRS, LLC, and Flatboat 1, LLC*

Michael Thompson
Captain of M/V DUTCHMAN and witness to incident

Juan Preto
M/V DUTCHMAN crewmember and witness to incident

Liem Huynh
Crane operator

James Irvin
USCG Inspector who inspected the M/V DUTCHMAN on April 23, 2018

Brian Pederson
*H&H Claims Consultants
Surveyor of damage to the M/V DUTCHMAN*

Gustavo Fajardo
Employee of Bro-Tex International Metals, LLC

Brandon Hill
Employee of Versatile Marine Services, Inc.

Don Twichell
Employee of West Marine, Inc.

Employees or representatives of Flatboat 1, LLC
Identified by Archimedes Recycling Ventures, LLC and Versatile Marine Services, Inc. as an entity with potentially relevant knowledge

Employees or representatives of Archimedes Recycling Ventures, LLC
Defendant

Employees or representatives of Versatile Marine Services, Inc., Defendant,
Defendant

Employees or representatives of Bro-Tex International Metals, LLC,
Defendant that supervised, directed, and/or controlled the crane operator who damaged the M/V DUTCHMAN

Employees or representatives of Henry & Sons Construction Company, Inc.
Defendant, owner and/or operator of crane that damaged M/V DUTCHMAN and employer of individual operating crane that damaged the vessel

Employees or representatives of JPRS, LLC
Owner or operator of crane that damaged the vessel

Employees or representatives of Bludworth Marine, LLC
Provided labor and materials for repair of the M/V DUTCHMAN

Employees or representatives of M&M Electric Services
Assisted with crane salvage from the M/V DUTCHMAN

Employees or representatives of West Marine, Inc.
Provided dismantling/demolition support services for the M/V DUTCHMAN

Employees or representatives of Coastal States FFST, Inc.
Sold the gangway for the M/V DUTCHMAN repairs

8. Any issues relating to disclosure or discovery of electronically stored information, including the form or forms in which it should be produced.

None at this time.

9. Any agreements or disputes relating to asserting claims of privilege or preserving discoverable information, including electronically stored information and any agreements reached under Federal Rule of Evidence 502.

None at this time.

10. Whether any other orders should be entered by the court pursuant to Federal Rule of Civil Procedure 26(c) or 16(b), (c).

None at this time.

11. The expected length of trial and whether it will be to a jury or the bench.

Trial is anticipated to last 3 to 4 days.

12. The names of the attorneys who will appear on behalf of the parties at the Management Conference (the appearing attorney must be an attorney of record and have full authority to bind the client).

Timothy W. Hassinger
GALLOWAY JOHNSON TOMPKINS BURR & SMITH
1301 McKinney, Suite 1400
Houston, Texas 77010
Telephone: (713) 599-0700
Counsel for Talisman Casualty Insurance Company
and Abe's Boat Rentals, Inc.

F. William Mahley
CLARK HILL PLC
909 Fannin Street
Houston, Texas 77010
Telephone: (713) 951-5633
Counsel for Archimedes Recycling Ventures, LLC
and Versatile Marine Services, Inc.

Lane Lowrey
SCHOUEST, BAMDAS, SOSHEA & BEN MAIER, PLLC
1001 McKinney Street, Suite 1400
Houston, Texas 77002
Telephone: (713) 588-0446
Counsel for Henry & Sons Construction Company, Inc.,
JPRS, LLC, and Jeff Henry

13. Any other matters that counsel deem appropriate for inclusion in the Joint Conference Report.

Bro-Tex International Metals, LLC has not yet made an appearance but is being served. However, the Plaintiffs understand that they have retained counsel in a related personal injury case pending in state court. The Plaintiffs expect to have them formally served before the

Management Conference.

s/ Timothy W. Hassinger
Counsel for Plaintiffs,
Talisman Casualty Insurance Company
and Abe's Boat Rentals, Inc.

1/18/2021
Date

s/ F. William Mahley
Counsel for Defendants,
Archimedes Recycling Ventures, LLC
and Versatile Marine Services, Inc.

1/18/2021
Date

s/ Lane Lowry
Counsel for Defendants,
Henry & Sons Construction Company, Inc.,
JPRS, LLC, and Jeff Henry

1/18/2021
Date